F. M. S. REPORTS.

[APPELLATE CRIMINAL JURISDICTION]

AITKEN, J.

October 23, 1936.

SAMINATHAN .....Appellant

v.

PUBLIC PROSECUTOR.....Respondent.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 73 of 1936.]

The Betting Enactment (Cap. 48), section 4 —Entry and search by Inspector who is not a Senior Police Officer—Illegal arrest does not affect Magistrate's jurisdiction.

An Inspector of Police, who was not a Senior Police Officer as defined in section 2 of the Betting Enactment (Cap. 48) entered and searched the appellant's room and also arrested the appellant on the charge of keeping a Common Betting House. The appellant was convicted on the said charge by the Magistrate.

On appeal it was argued that as the appellant had been illegally arrested the conviction could not stand and that the documents, which had been found during the search, were not admissible in evidence because the police did not obtain possession of them legally.

Held, that the legality or illegality of a person's arrest does not concern the Court which is trying him.

Held further, that the Magistrate was only concerned with the relevancy of the documents and not with the manner in which the police obtained possession of them.

J. Dunford Wood for the appellant.

I. W. Blelloch, Deputy Public Prosecutor, for the respondent.

AITKEN, J.—This case raises several interesting points of law, but I have arrived at a clear decision as to what I should do, and it is only fair to the accused that I should make that decision known right away.

The accused was charged with keeping a common betting house, and the charge arose out of information given to the police early in June last.

On the 6th of June there was a race meeting at Kuala Lumpur, and in the morning of that day a Police Inspector and Detective were watching the room occupied by the accused from a building near by, and they saw four or five Tamils enter the house and leave it. They also saw a certain Tamil named Thangavelu enter the house, and to Thangavelu they had given two marked notes on the understanding that he would place a bet with the accused. After they had watched for a time they went quickly to the room of the accused. The Inspector's evidence as to what he saw when he entered the house is this:—

> "When accused saw me he rushed to the table, grabbed some small pieces of paper from it and pushed them straight into his mouth. He started chewing them; he did not swallow them. He tried to run out of the room. I and Detective 152 caught him by the door, he nearly succeeded in escaping from our clutch."

After securing the accused they searched his room in his presence, and they found a number of pocket books and documents which seemed to indicate quite clearly that accused was taking a close interest in betting and horse racing in this country, and had recorded numerous bets which were made with him on different occasions. On the way to the Police Station the pieces of paper which the accused had been chewing brought about some unpleasant results, at least for the Inspector, because the accused vomited in the Inspector's car.

Eventually the accused was brought to trial, and it then turned out that the Inspector who entered his house and searched it, and who arrested him was not a senior police officer within the meaning of that term as defined in section 2 of the Betting Enactment (Cap. 48). In other words, the search and entry of the accused's room and his arrest were illegal. Notwithstanding this, the learned Magistrate proceeded with the trial and the evidence was substantially to this effect:—

Two Tamils named Thangavelu and Mydin came forward and said that they had been in the habit of making bets with the accused in this room of his for some time. The pocket books and documents found in his room were put in evidence against him. The marked note which was found in the pocket of his coat was also put in evidence, and the sum of $61/–, which was in his possession at the moment the house was entered, was also put in evidence against him. The learned Magistrate, in directing his mind to all this evidence, expressly stated that he was disregarding the presumptions referred to in section 10 of the Betting Enactment, and laid it down that the onus of proof was entirely on the prosecution. Having directed his mind in that way to the evidence before him, he came to the conclusion that the prosecution had established their case. He accordingly convicted the accused and fined him $800/–, in default to undergo six months' rigorous imprisonment.

It is now argued before me—

1. That as the accused was illegally arrested the proceedings were void *ab initio* and the conviction cannot stand. I reject that argument. It seems to me that there is an

overwhelming mass of authority for the proposition that the legality or illegality of a man's arrest does not concern the Court which is trying him. That Court is only concerned with the charge brought against him; he has his remedy for the illegal arrest elsewhere.

Secondly, it is argued that the documents which were found during the search should not have been put in evidence against him, because the police were not in legal possession of them. It was stated that they were really the stolen property of the accused. Here again I have come to the conclusion that the manner in which the police obtained possession of these documents does not concern the Magistrate who is trying the accused; he is only concerned with their relevancy.

Then Mr. Dunford Wood argued with considerable force, that the evidence is not sufficient to support the charge against the accused. He argued that the two witnesses Thangavelu and Mydin should have been treated as accomplices, and that there is no corroboration of their evidence. In regard to Thangavelu and Mydin I am inclined to agree with Mr. Dunford Wood's contention. I think they were accomplices, but I cannot agree that there was no evidence to corroborate them. The marked note was corroboration; the accused's conduct in swallowing a number of bits of paper was also corroboration; and so too were the note books and other documents found in his room. The accused's evidence in the Court below is certainly far from convincing. He made far too many denials. He denied that Thangavelu came to his house. He denied that he knew Mydin; he denied that he had swallowed any bits of paper and he even denied that he vomited. He had to admit the marked note was in his pocket, but he stated that he did not know how it got there. Taking the evidence as a whole, I think that it was sufficient to support the conviction, in other words I cannot see that the learned Magistrate was wrong in fact. He took the view that this place was open to a class of the public for the purpose of betting and wagering, and, I think, the Tamil population of Ipoh, or even a section of such population, can properly be regarded as a class of the public. He also took the view that the room had been used for habitual betting or wagering. I am not prepared to say that he was wrong in taking that view. I think that a Magistrate or Jury could reasonably have come to that conclusion on the evidence in this case, though I doubt whether I myself would have arrived at the same conclusion. The appeal must be dismissed.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C. J., WHITLEY & AITKEN, JJ.

November 27, 1936.

ONG EE LIM.....Plaintiff-Appellant.

v.

THE GOVERNMENT OF THE FEDERATED MALAY STATES...Defendants-Respondents.

[SELANGOR CIVIL APPEAL No. 13 of 1936.]

Pleadings—The Civil Procedure Code (Cap. 7) section 42—Action against Government—The Government Suits Enactment (Cap. 17) section 10—The Public Authorities Protection Enactment (Cap. 30) section 2—Doctrine of "res ipsa loquitur."

The plaintiff-appellant, the managing proprietor of the Prince's and Coliseum Theatres, Kuala Lumpur, claimed damages against the defendants-respondents for the destruction by fire of certain reels of films whilst they were being examined by an Assistant Commissioner of Police at the Central Police Station, Kuala Lumpur.

The material parts of the plaint were as follows:—

"2. For several years now the plaintiff has been required by the defendant to produce to the Officer in Charge of the Police District the films, each and every, that he had arranged to exhibit at any of his two said theatres, at the office of the Officer in charge of the Police District at the Central Police Station Kuala Lumpur, for the purpose of the said officer being satisfied among other things that the said films so arranged to be exhibited had been passed as fit for exhibition in the States by the Official Censor at Singapore.

3. In accordance with such requirement on the 24th day of September 1935 the plaintiff caused to be produced at the Central Police Station, Kuala Lumpur, the first reel of the film entitled 'In Caliente' together with other reels making up the 'shorts' usually presented on the screen before the main feature.

4. On the said 24th day of September 1935 the Officer of the defendant who examined these films was a Mr. H. F. Ridley, Assistant Commissioner of Police, Federated Malay States.

5. During the examination there was a sudden blaze of fire and several lengths of the said films were destroyed.

6. The plaintiff has in consequence been put to considerable loss and expense by having to pay for the films destroyed for screening other pictures and he claims against the defendant the sum of $1,229.45 as damages.....".

The written statement of defence was as follows:—

"1. Paragraph 1 of the plaint is admitted.

2. Paragraph 2 of the plaint is admitted in so far as it relates to the production of the said films for the purpose of satisfying the Officer in charge of the Police District Kuala Lumpur, that the said films had been passed as fit for exhibition in the Federated Malay States by the Official Censor at Singapore but it is denied that the said films were produced for any other purpose.

3. Paragraphs 3, 4 and 5 are admitted.

4. The defendant will submit that the plaint discloses no cause of action.....".

The Plaintiff-appellant contended that he was in the position of a bailor invitee. He relied on the doctrine of *res ipsa loquitur* and submitted that it was unnecessary for him to plead negligence.